REMARKS

Reconsideration of this application, as amended, is respectfully requested.

RE: THE BEST MODE REJECTION UNDER 35 USC 112

On page 2 of the Office Action, the Examiner rejects claims 28-43 under 35 USC 112 on the basis that the best mode contemplated by the inventor has not been disclosed.

It is respectfully submitted, however, that the Examiner has not satisfied the requirements for such a rejection set forth in MPEP 2165.03.

MPEP 2165.03 clearly explains that a proper best mode analysis includes two components.

First, the Examiner must determine that, at the time the application was filed, the inventor knew of a mode of practicing the claimed invention that the inventor considered to be better than any other. And as set forth in MPEP 2165.03, the Examiner must possess evidence to support such a determination.

Second, the Examiner must present a comparison of the disclosure and the best mode known by the inventor to determine if the disclosure is adequate to enable the practice of the best mode by one skilled in the art. And as set forth in MPEP 2165.03, it is only appropriate to proceed to the second component of the

best mode analysis if the Examiner has evidence that the inventor knew of a best mode at the time the application was filed.

In the Final Office Action, the Examiner states that the "[e]vidence of concealment of the best mode is based upon a method for backup data utilizing a remote maintenance system."

This statement by the Examiner, however, is merely a restatement of the summary of the present invention contained in the BRIEF SUMMARY OF THE INVENTION section of the specification at page 2, lines 20 and 21 of the present application. And it is respectfully submitted that the Examiner has not presented any actual evidence that, at the time the application was filed, the inventor knew of a mode of practicing the claimed invention that the inventor considered to be better than any other.

It is noted that MPEP 2165.03 points out that best mode rejections during *ex parte* prosecution should be "extremely rare" since the evidence necessary to support such a rejection is normally available only through proceedings such as discovery procedures during litigation.

It is respectfully submitted that the Examiner has clearly not satisfied the requirements of the first component of the best mode analysis set forth in MPEP 2165.03, since the Examiner has not presented any actual evidence that at the time the application was filed, the inventor knew of a best mode of

practicing the claimed invention that the inventor considered to be better than any other.

In addition, it is respectfully pointed out that even if the "evidence" presented by the Examiner were sufficient evidence that the inventor knew of a best mode at the time the application was filed, the Examiner has not pointed to any instances where the disclosure in the specification is inadequate to enable the practice of the "best mode".

In view of the foregoing, it is respectfully submitted that the Examiner has clearly not satisfied the requirements of MPEP 2165.03 for making a rejection based on a lack of best mode, and it is therefore respectfully requested that the rejection under 35 USC 112 be withdrawn.

RE: THE CLAIM AMENDMENTS

Independent claims 28, 38 and 41 have been amended to clarify the features of the present invention whereby claim information is acquired from an apparatus of a first user in which trouble occurred, and whereby at least one necessary usage data item is identified based on a corresponding claim type of the claim information. See the disclosure in the specification at, for example, page 5, line 6 to page 6, line 26.

In addition, independent claims 28, 38 and 41 have been amended to recite the feature of the present invention whereby

the usage data information acquired from the apparatus of the first user is compared with the usage data information acquired from the apparatus of the second user, both of the acquired usage data information is analyzed, and a solution is determined for the claim. See the disclosure in the specification at, for example page 7, lines 17-21, and at page 8, line 21 to page 9, line 9.

Still further, claims 29, 30, 39, 40, 42 and 43 have been amended to better accord with amended independent claims 28, 38 and 41.

No new matter has been added, and it is respectfully requested that the amendments to the claims be approved and entered.

THE PRIOR ART REJECTION

Claims 28-43 were rejected under 35 USC 102 as being anticipated by U.S. 2002/0129047 ("Cane et al"). This rejection, however, is respectfully traversed with respect to the claims as amended hereinabove.

According to the present invention as recited in amended independent claims 28, 38 and 41, claim information is acquired from an apparatus of a first user in which an error has occurred (the apparatus has a copying function). At least one necessary usage data item is identified based on a claim type corresponding

to the claim information. The apparatus of the first user and an apparatus of a second user, which are of a same model, are accessed through a network, and usage data information corresponding to the identified usage data item is acquired from the apparatus of the first user and from the apparatus of the second user. The usage data information acquired from the apparatus of the first user is then compared with the usage data information acquired from the apparatus of the second user, both acquired usage data information are analyzed, and a solution for the claim is determined.

That is, according to the present invention as recited in amended independent claims 28, 38 and 43, claim information is acquired from an apparatus of a first user in which an error has occurred, and usage data information from both the apparatus of the first user and usage data from an apparatus of a second user are compared and analyzed to determine a solution for the claim from the apparatus of the first user.

With this structure, usage data from an apparatus in which an error has occurred and from a normally functioning (second) apparatus can be compared to work out an accurate solution for the problem in the (first) apparatus in which the error has occurred. (See the disclosure in the specification at page 7, lines 4-21.)

By contrast, it is respectfully submitted that Cane et al merely discloses a method and apparatus for providing a multiple copy file backup system in which files that have been previously backed up by a first user are to be backed up by different users. (See the abstract of Cane et al.)

And it is respectfully submitted that the backup system disclosed by Cane et al does not at all correspond to the above described structure of the present invention as recited in amended independent claims 28, 38 and 41, in which the solution for a claim from a first apparatus is determined by acquiring and analyzing usage data from both the apparatus with the error and an additional (second) apparatus.

Accordingly, it is respectfully submitted that the present invention as recited in amended independent claims 28, 38 and 41, as well as claims 29-37, 39, 40, 42 and 43 respectively depending therefrom, clearly patentably distinguishes over Cane et al, under 35 USC 102 as well as under 35 USC 103.

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In view of the foregoing, entry of this Amendment, allowance of the claims and the passing of this application to issue are respectfully solicited.

If the Examiner has any comments, questions, objections or recommendations, the Examiner is invited to telephone the undersigned for prompt action.

Respectfully submitted,

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